

11. PUBLIC EMPLOYER

11.11: Definition

“To properly define ‘public employer’ we must appreciate the economic realities sought by the Collective Bargaining for Public Employees Act and the Library Systems Act Sections **44-2112, et seq. RCM 1947**, and reconcile any differences if possible.” **AFSCME Local 2390 v. Billings (1976)**

“Public employer is defined in section **59-1602(1), RCM 1947.**” **ULP #11-78**

“Section **39-31-103(1)** ... [states] that ‘any representative or agent designated by the public employer to act in its interest in dealing with public employees’ will be considered a public employer.” **UD #18-78**

“Our law defines public employer as: ‘... the state of Montana or any political subdivision thereof, including but not limited to any town, city, county, district, school board, board of regents, public and quasi-public corporation, housing authority or other authority established by law, and any representative or agent designated by the public employer to act in its interest in dealing with public employees.’ **39-31-103(1).**” **UC #4-79**

“Section **39-31-103(1) MCA** defines public employer as the state of Montana or any political subdivision thereof.... An individual employed at the [Fort Peck] Community College is an employee of the tribe.... This Board does not have jurisdiction in this matter as the Complainant is not a public employee ... and the Defendant is not a public employer...” **ULP #50-79**

“The Support Services Division board of directors is not an independent, autonomous entity. The City of Helena and Lewis and Clark County are the independent, autonomous entities. The board of directors has no taxing authority, that rests with the City and County. The agreement and by-laws of August of 1985 clearly show the board’s lack of independence. . . . The Support Services Division is not a public employer under section **39-31-103 MCA.**” **EP #1-86.**

11.12: Determination

“The economic realities show that the City, not the Board of Library trustees, ultimately provides the salaries and wages of the library personnel. The City has a substantial legitimate interest in the operation of the library, which qualifies the City as the ‘public employer’ of the Billings City Library personnel.... [the Board of Trustees of the Library are] merely ... ‘supervisory employees’ as defined in Section **59-1602(3), RCM 1947.**” **AFSCME Local 2390 v. Billings (1976).** See also **ULP #11-78.**

"[T]he NLRB emphasizes three factors in distinguishing the employee from the independent contractor: (1) the entrepreneurial aspects of the dealer's business, including the 'right to control', (2) the risk of loss and opportunity for profit, and (3) the dealer's proprietary interest in his dealership KAL Leasing, Inc., is an independent contractor. The School District is not the employer of KAL Leasing, Inc., or its employees." **UD #18-78**

"There is no clear delineation in our Act of those who the public employer is for purposes of collective bargaining for the probation officers. Therefore, I believe it is necessary that this Board look to the aims which the Legislature sought to achieve when it enacted the law." **UC #4-79**

"[T]he lack of ability to effectively negotiate with the employees indicates that the Treasurer is not the public employer and the same principle applies to an alleged public employer whether he is elected, appointed or employed." **ULP #19-79**

Under the "right to control" standard, "after determining whether a company meets the definition of employer, the National Labor Relations Board goes on to determine whether it has sufficient control over the employment conditions of its employees to enable it to bargain with a labor organization." **UD #6-84**

"The public employer here was the Livingston School District and not Ger sack nor any of the other trustees. The teachers are under contract with the *district*, **Section 20-4-301 MCA**. The district is a 'body corporate and, as such body corporate, may sue and be sued, contract and be contracted with, and acquire, hold, use, and dispose of real or personal property for school purposes, within the limitations prescribed by law.' **Section 20-6-101(3) MCA**. **ULP #20-89**.

"Controversy arose during the investigation and pre-hearing procedures concerning the proper named Defendant(s). It is clear that this Board has previously identified the proper employer in its Letter of Certification.... The Board certified the United Food and Commercial Workers Local Union 1981 as the exclusive representative for collective bargaining purposes for all dispatchers, deputies, and undersheriffs employed by *Broadwater County* excluding the sheriff and all others excluded by the Montana Collective Bargaining for Public Employees Act, **Section 39-31-101 et seq. MCA**." **ULP #13-90**.

11.13: Joint Public Employer

"I will not order joint employers...because this would add to the sources of strife and this would add to the proliferation of small single office bargaining units.... A joint employer would also subtract from the theory of one consistent overall administration of county governmental affairs.... The Cascade County Treasurer is a supervisory employee." **ULP #19-79**

“Applying the “right to control” standard adopted by the National Labor Relations Board we can only conclude that the Great Falls Transit District and Transit Management of Great Falls are joint employers.” **UD #6-84**

11.16: Successor Employer [See also 41.8, 46.15, 72.582, and 73.471.]

“[T]he labor agreement is binding on the Montana Public Employees Association and Cascade County Commissioners even though some of the Commissioners and some of the supervisory employees may have changed.” **ULP #19-79**

11.22: Political Entities – County

“[T]he Cascade County Commissioners have the power by way of a labor agreement to set forth how the County Treasurer is to exercise his supervisory powers.” **ULP #19-79**

11.31: Agency – Authority [See also 09.11, 41.22, and 72.530.]

See **ULP #17-77**.

11.32: Agency – Board

“In **AFSCME Local 2390 v. City of Billings**, ... the Montana Supreme Court held that the Library board of trustees was not a wholly independent and autonomous entity separate and apart from the local governing body. The Board of Trustees was granted independent powers to manage and operate the library, but they were an adjunct of local government, the City of Billings.” **UC #4-79**

11.4: Courts

“[C]onsidering the ‘economic realities’ of the situation, and applying the definition broadly as the Supreme Court directed should be done, then no other conclusion can be reached by that the City of Missoula is the employer of Evan Felde and not Judge Clark....” **ULP #11-78**

“It is abundantly apparent that the District Courts are not adjuncts of Montana County government; however, I do not believe such relationships must exist as a prerequisite to a determination that the policy of the Act is best promoted by declaring the County Commissioners the employer for purposes of collective bargaining. Such policy does not infringe upon the judiciary’s independence.” **UC #4-79**

11.52: Educational Institutions – Community College

See **Rippey v. Flathead Valley Community College (1984)**.

11.55: Educational Institutions – Board of Regents

See **Rippey v. Flathead Valley Community College (1984)**.

11.7: Rights and Responsibilities

The Montana Supreme Court concluded “that reassignment [of an administrator back to classroom teaching], without reduction in salary, for legitimate financial constraints, is justifiable and not contrary to tenure laws.” **Sorlie v. School District (1983)**

“No insurmountable difficulties for labor, management or the judiciary should arise if the County is the public employer for collective bargaining purposes. Since the inception of the subject unit the Commissioners representatives have negotiated for all the employees in the existing unit including the deputy probation officers.” **UC #4-79**